

109TH CONGRESS  
2D SESSION

# H. R. 5673

To amend title 18, United States Code, to make restitution mandatory for Federal crimes, and to simplify and streamline its procedures, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2006

Mr. CHABOT (for himself, Mr. POE, Mr. GOHMERT, and Mr. GINGREY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to make restitution mandatory for Federal crimes, and to simplify and streamline its procedures, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Criminal Restitution  
5       Improvement Act of 2006”.

1 **SEC. 2. MANDATORY RESTITUTION FOR FEDERAL OF-**  
2 **FENSES.**

3 Title 18, United States Code, is amended by striking  
4 section 3663 and all that follows through section 3664 and  
5 inserting the following:

6 **“§ 3663. Mandatory restitution**

7 “(a) RESTITUTION REQUIRED.—The court shall  
8 order a convicted defendant to make restitution for all pe-  
9 cuniary loss to identifiable victims, including pecuniary  
10 loss resulting from physical injury to, or the death of, an-  
11 other, proximately resulting from the offense.

12 “(b) TO WHOM MADE.—

13 “(1) GENERALLY.—The court shall order res-  
14 titution be made to each victim of the offense.

15 “(2) DEFINITION OF VICTIM.—As used in this  
16 section and section 3664, the term ‘victim’ means—

17 “(A) each identifiable person or entity suf-  
18 fering the pecuniary loss (and any successor to  
19 that person or entity); and

20 “(B) others, as agreed to in a plea agree-  
21 ment or otherwise provided by law.

22 “(c) EXTENT OF RESTITUTION.—Restitution shall  
23 compensate the victim for all of the victim’s pecuniary  
24 loss, including—

25 “(1) the victim’s costs of seeking and collecting  
26 restitution;

1           “(2) in the case of an offense resulting in bodily  
2 injury to a victim—

3           “(A) an amount equal to the cost of nec-  
4 essary medical and related professional services  
5 and devices relating to physical, psychiatric,  
6 and psychological care, including nonmedical  
7 care and treatment rendered in accordance with  
8 a method of healing recognized by the law of  
9 the place of treatment;

10           “(B) an amount equal to the cost of nec-  
11 essary physical and occupational therapy and  
12 rehabilitation; and

13           “(C) income lost by such victim as a result  
14 of such offense;

15           “(3) in the case of an offense resulting in bodily  
16 injury that results in the death of the victim,  
17 amount equal to the cost of necessary funeral and  
18 related services; and

19           “(4) lost income and necessary child care,  
20 transportation, and other expenses incurred during  
21 participation in the investigation or prosecution of  
22 the offense or attendance at proceedings related to  
23 the offense.

1       “(d) SPECIAL RULE FOR MISDEMEANORS.—In the  
2 case of a misdemeanor, an order of restitution may be in  
3 lieu of any other penalty.

4       “(e) ALTERNATIVE ARRANGEMENTS IN LIGHT OF  
5 PRACTICAL PROBLEMS.—The court shall provide as com-  
6 plete a restitution to as many victims as possible, though  
7 not the full restitution to all victims otherwise required  
8 by this section, to the extent the court finds on the record  
9 that—

10           “(1) the number of identifiable victims is so  
11 large as to make restitution impracticable; or

12           “(2) determining complex issues of fact related  
13 to the cause or amount of a victim’s losses would  
14 complicate or prolong the sentencing process to such  
15 a degree that the need to provide restitution to that  
16 victim is outweighed by the burden on the sen-  
17 tencing process.

18       **“§ 3664. Procedure for issuance and enforcement of**  
19               **order of restitution**

20       “(a) REPORT BY PROBATION OFFICER.—

21           “(1) DUTY TO MAKE.—The probation officer  
22 shall obtain and include in the presentence report, or  
23 in a separate report, as the court may direct, infor-  
24 mation sufficient for the court to fashion a restitu-  
25 tion order.

1           “(2) CONTENTS.—The report shall include, to  
2           the extent practicable, a complete accounting of the  
3           losses to each victim, any restitution owed pursuant  
4           to a plea agreement, and information relating to the  
5           economic circumstances of each defendant. If the  
6           number or identity of victims cannot be reasonably  
7           ascertained, or other circumstances exist that make  
8           this requirement impracticable, the probation officer  
9           shall so inform the court and make the best efforts  
10          possible to estimate the loss and identify the victims.

11          “(b) DISCLOSURE TO PARTIES.—The court shall dis-  
12         close to the defendant, the attorney for the Government,  
13         and, upon request, potential recipients of restitution, all  
14         portions of the presentence or other report pertaining to  
15         the matters described in subsection (a).

16          “(c) INFORMATION FROM ATTORNEY FOR THE GOV-  
17         ERNMENT.—The attorney for the Government shall pro-  
18         vide to the probation officer any information the Attorney  
19         for the Government has relevant to the matters required  
20         to be reported under subsection (a).

21          “(d) NOTICE TO VICTIMS.—The probation officer  
22         shall, before submitting the presentence report under sub-  
23         section (a), to the extent practicable—

24                 “(1) provide notice to all identified victims of—

1           “(A) the offense or offenses of which the  
2           defendant was convicted;

3           “(B) the amounts subject to restitution  
4           submitted to the probation officer;

5           “(C) the opportunity of the victim to sub-  
6           mit information to the probation officer con-  
7           cerning the amount of the victim’s losses;

8           “(D) the scheduled date, time, and place of  
9           the sentencing hearing;

10          “(E) the availability of a lien in favor of  
11          the victim; and

12          “(F) the opportunity of the victim to file  
13          with the probation officer a separate affidavit  
14          relating to the amount of the victim’s losses  
15          subject to restitution; and

16          “(2) provide the victim with an affidavit form  
17          to submit pursuant to paragraph (1)(F).

18          “(e) DEFENDANT’S AFFIDAVIT AS TO FINANCES.—  
19          Each defendant shall prepare and file with the probation  
20          officer an affidavit fully describing the financial resources  
21          of the defendant, including a complete listing of all assets  
22          owned or controlled by the defendant as of the date on  
23          which the defendant was arrested, the financial needs and  
24          earning ability of the defendant and the defendant’s de-  
25          pendents, and such other information that the court re-

1 quires relating to such other factors as the court deems  
2 appropriate.

3 “(f) ADDITIONAL DOCUMENTATION OR TESTI-  
4 MONY.—After reviewing the report of the probation offi-  
5 cer, the court may require additional documentation or  
6 hear testimony. The privacy of any records filed, or testi-  
7 mony heard, pursuant to this section shall be maintained  
8 to the greatest extent possible, and such records may be  
9 filed or testimony heard in camera.

10 “(g) DATE FOR FINAL DETERMINATION.—If a vic-  
11 tim’s losses are not ascertainable by the date that is 10  
12 days before sentencing, the attorney for the Government  
13 or the probation officer shall so inform the court, and the  
14 court shall set a date for the final determination of the  
15 victim’s losses, not to exceed 90 days after sentencing. If  
16 the victim subsequently discovers further losses, the victim  
17 shall have 60 days after discovery of those losses in which  
18 to petition the court for an amended restitution order.  
19 Such order may be granted only upon a showing of good  
20 cause for the failure to include such losses in the initial  
21 claim for restitution.

22 “(h) REFERRAL TO MAGISTRATE OR SPECIAL MAS-  
23 TER.—The court may refer any issue arising in connection  
24 with a proposed order of restitution to a magistrate judge  
25 or special master for proposed findings of fact and rec-

1 ommendations as to disposition, subject to a de novo de-  
2 termination of the issue by the court.

3 “(i) BURDENS OF PROOF.—Any dispute as to the  
4 proper amount or type of restitution shall be resolved by  
5 the court by the preponderance of the evidence. The bur-  
6 den of demonstrating the amount of the loss sustained by  
7 a victim of restitution as a result of the offense shall be  
8 on the attorney for the Government. The burden of dem-  
9 onstrating the financial resources of the defendant and the  
10 financial needs of the defendant’s dependents, shall be on  
11 the defendant. The burden of demonstrating such other  
12 matters as the court deems appropriate shall be upon the  
13 party designated by the court as justice requires.

14 “(j) ORDER OF PAYMENT.—

15 “(1) Upon determination of the amount of res-  
16 titution owed to each victim, the court shall order  
17 that the full amount of restitution is due and pay-  
18 able immediately.

19 “(2) The court shall specify in the restitution  
20 order the manner in which the restitution is to be  
21 paid. The court may provide for payment in install-  
22 ments according to a schedule, based on—

23 “(A) the financial resources and other as-  
24 sets of the defendant, including whether any of  
25 these assets are jointly controlled;



1           “(B) projected earnings and other income  
2           of the defendant; and

3           “(C) any financial obligations of the de-  
4           fendant; including obligations to dependents.

5           “(3) The Attorney General may collect and  
6           apply unreported or otherwise newly available assets  
7           to the payment of restitution, without regard to any  
8           installment payment provisions.

9           “(k) ORDER AS FINAL JUDGMENT.—A sentence that  
10          imposes an order of restitution is a final judgment not-  
11          withstanding the fact that—

12           “(1) such a sentence can subsequently be—

13           “(A) corrected under Rule 35 of the Fed-  
14           eral Rules of Criminal Procedure and section  
15           3742 of chapter 235 of this title;

16           “(B) appealed and modified under section  
17           3742;

18           “(C) amended under subsection (d)(5); or

19           “(D) adjusted under section 3664(k),  
20           3572, or 3613A; or

21           “(2) the defendant may be resentenced under  
22           section 3565 or 3614.

23           “(l) JOINT AND SEVERAL RESPONSIBILITY.—If the  
24          offense involves more than one defendant, the court may

1 order each defendant jointly and severally liable for any  
2 or all of the restitution.

3 “(m) SUPERVISED RELEASE.—A court shall not ter-  
4 minate a term of supervised release under section 3583(e)  
5 before the order to pay restitution has been completely  
6 satisfied. A court shall extend a term of supervised release  
7 beyond that otherwise imposed under other provisions of  
8 law, until the defendant has paid the restitution in full  
9 or the court determines the economic circumstances of the  
10 defendant do not allow the payment of any further restitu-  
11 tion. If the supervised release is extended under this sub-  
12 section, the court shall order that the sole condition of  
13 supervised release shall be payment of restitution.

14 “(n) EFFECT OF INSURANCE AND OTHER COM-  
15 PENSATION.—

16 “(1) INSURANCE.—In no case shall the fact  
17 that a victim receives or is entitled to receive com-  
18 pensation with respect to a loss from insurance or  
19 any other source be considered in determining the  
20 amount of restitution. If a victim receives compensa-  
21 tion from insurance or any other source with respect  
22 to a loss, the court shall order that restitution be  
23 paid to the person who provided or is obligated to  
24 provide the compensation, but the restitution order

1 shall provide that all victims be paid before such a  
2 provider of compensation.

3 “(2) OTHER COMPENSATION.—Any amount  
4 paid to a victim under an order of restitution shall  
5 be reduced by any amount later recovered as com-  
6 pensatory damages for the same loss by the victim  
7 in—

8 “(A) any Federal civil proceeding; and

9 “(B) any State civil proceeding, to the ex-  
10 tent provided by the law of the State.

11 “(o) DETAILS OF PAYMENTS.—

12 “(1) MINIMUM PAYMENT REQUIRED.—A res-  
13 titution order may direct the defendant to make  
14 nominal periodic payments if the court finds on the  
15 record that the economic circumstances of the de-  
16 fendant do not allow the payment of any amount of  
17 a restitution order, and do not allow for the payment  
18 of the full amount of a restitution order in the fore-  
19 seeable future under any reasonable schedule of pay-  
20 ments.

21 “(2) IN-KIND PAYMENTS.—An in-kind payment  
22 may be in the form of return of property, replace-  
23 ment of property, or if the victim agrees, services  
24 rendered to the victim or a person or organization  
25 other than the victim.

1       “(p) DIFFERENT PAYMENT SCHEDULES FOR MUL-  
2 TIPLE VICTIMS.—If the court finds that more than 1 vic-  
3 tim has sustained a loss requiring restitution by a defend-  
4 ant, the court may provide for a different payment sched-  
5 ule for each victim, based on their individual losses and  
6 economic circumstances. In any case in which the United  
7 States is a victim, the court shall ensure that all other  
8 victims receive full restitution before the United States re-  
9 ceives any restitution.

10       “(q) MATERIAL CHANGE IN DEFENDANT’S ABILITY  
11 TO PAY.—The defendant shall notify the court and the  
12 Attorney General of any material change in the defend-  
13 ant’s economic circumstances that might affect the de-  
14 fendant’s ability to pay restitution. The court may also  
15 accept notification of a material change in the defendant’s  
16 economic circumstances from the United States or from  
17 the victim. The Attorney General shall certify to the court  
18 that the victims have been notified of the change in cir-  
19 cumstances. Upon receipt of the notification, the court  
20 may, on its own motion, or the motion of any party, in-  
21 cluding the victim, adjust the payment schedule, or require  
22 immediate payment in full, as the interests of justice re-  
23 quire.

24       “(r) NAME AND ADDRESS CHANGES.—It is the re-  
25 sponsibility of the victim to provide any change in name

1 or mailing address to the court while restitution is still  
2 owed. Not later than 30 days after any change in name  
3 or mailing or residence address, a person owing restitution  
4 shall promptly report the change to the court. The con-  
5 fidentiality of any information relating to a victim shall  
6 be maintained.

7 “(s) ENFORCEMENT.—

8 “(1) GENERALLY.—An order of restitution may  
9 be enforced by the United States in the manner pro-  
10 vided for in subchapter C of chapter 227 and sub-  
11 chapter B of chapter 229 of this title.

12 “(2) ABSTRACT OF JUDGMENT.—At the request  
13 of a victim named in a restitution order, the clerk  
14 of the court shall issue an abstract of judgment cer-  
15 tifying that a judgment has been entered in favor of  
16 such victim in the amount specified in the restitution  
17 order. Upon registering, recording, docketing, or in-  
18 dexing such abstract in accordance with the rules  
19 and requirements relating to judgments of the court  
20 of the State where the district court is located, the  
21 abstract of judgment shall be a lien on the property  
22 of the defendant located in such State in the same  
23 manner and to the same extent and under the same  
24 conditions as a judgment of a court of general juris-  
25 diction in that State.

1           “(3) SPECIAL RULE FOR IN-KIND ORDERS.—An  
2           order of in-kind restitution in the form of services  
3           shall be enforced by the probation officer.

4           “(t) EFFECT OF ADDITIONAL RESOURCES.—If a per-  
5           son obligated to provide restitution, or pay a fine, receives  
6           additional resources from any source, including inherit-  
7           ance, settlement, or other judgment, during a period of  
8           incarceration or supervision, such person shall be required  
9           to apply the value of such resources to any restitution or  
10          fine still owed.

11          “(u) RIGHTS OF VICTIMS.—

12                 “(1) NOT REQUIRED TO PARTICIPATE.—No vic-  
13                 tim shall be required to participate in any phase of  
14                 a restitution order.

15                 “(2) ASSIGNMENT TO FUND.—A victim may at  
16                 any time assign an interest in restitution payments  
17                 to the Crime Victims Fund in the Treasury without  
18                 in any way impairing the obligation of the defendant  
19                 to make such payments.

20          “(v) NO CAUSE OF ACTION CREATED AGAINST THE  
21          UNITED STATES OR ITS OFFICERS OR EMPLOYEES.—  
22          Nothing in this section or section or 3663 shall be con-  
23          strued to create a cause of action not otherwise authorized  
24          in favor of any person against the United States or any  
25          officer or employee of the United States.”.

1 **SEC. 3. TABLE OF SECTIONS AMENDMENT.**

2 The table of sections at the beginning of chapter 232  
 3 of title 18, United States Code, is amended by striking  
 4 the item relating to sections 3663 and all that follows the  
 5 item relating to section 3664 and inserting the following:

“3663. Mandatory restitution.

“3664. Procedure for issuance and enforcement of order of restitution.”.

6 **SEC. 4. EFFECT OF RESTITUTION ORDER ON SENTENCE OF**  
 7 **PROBATION.**

8 Section 3564 of title 18, United States Code, is  
 9 amended by adding at the end the following:

10 “(f) RELATION TO RESTITUTION ORDER.—The court  
 11 shall not terminate a term of probation under section  
 12 3564(c) if the defendant has an unsatisfied order of res-  
 13 titution. The court shall extend probation for such a de-  
 14 fendant beyond any term otherwise provided by law until  
 15 the order is satisfied or the court determines the economic  
 16 circumstances of the defendant do not allow the payment  
 17 of any further restitution.. The sole condition of such ex-  
 18 tended probation shall be the satisfaction of that order.”.

19 **SEC. 5. CONFORMING AMENDMENTS AND REPEALS.**

20 (a) ELIMINATION OF SPECIALIZED MANDATORY  
 21 RESTITUTION PROVISIONS.—Title 18, United States  
 22 Code, is amended by striking—

23 (1) section 1593;

24 (2) section 2248;

- 1 (3) section 2259;
- 2 (4) section 2264; and
- 3 (5) section 2327.

4 (b) CONFORMING AMENDMENTS TO TABLES.—The  
5 table of sections for each of the chapters of title 18,  
6 United States Code, from which a section is stricken by  
7 subsection (a) is amended by striking the item relating  
8 to that section.

9 (c) ELIMINATION OF PROCEDURAL MATTERS MOVED  
10 TO RESTITUTION SECTIONS.—Section 3612(b)(1) of title  
11 18, United States Code, is amended—

- 12 (1) by striking subparagraphs (F) and (G);
- 13 (2) by inserting “and” at the end of subpara-  
14 graph (D); and
- 15 (3) by striking the semicolon at the end of sub-  
16 paragraph (E) and inserting a period.

17 (d) CROSS REFERENCE CORRECTIONS.—Section  
18 3563(a)(6)(A) of title 18, United States Code, is amended  
19 by striking “2248, 2259, 2327, 3663, 3663A, and 3664”  
20 and inserting “3663 and 3664”.

21 **SEC. 6. SPECIAL FORFEITURE OF COLLATERAL PROFITS**  
22 **FROM CRIME.**

23 Subsection (a) of section 3681 of title 18, United  
24 States Code, is amended by striking “ the interest of jus-  
25 tice or an order of restitution” and all that follows through



1 the end of the subsection and inserting “the compelling  
 2 interest of preventing wrongdoers from profiting from  
 3 their crimes or of providing restitution to the victims of  
 4 those crimes so requires, order the offender (or any trans-  
 5 feree of that defendant) to forfeit any profits made pos-  
 6 sible by the offense.”.

7 **SEC. 7. MASHA’S LAW.**

8 (a) IN GENERAL.—Section 2255 of title 18, United  
 9 States Code, is amended to read as follows:

10 **“§ 2255. Civil remedy**

11 “(a) Any person who is a victim while a minor of a  
 12 violation of section 2241(c), 2242, 2251, 2251A, 2252,  
 13 2252A, 2260, 2421, 2422, or 2423 may in a civil action  
 14 obtain appropriate relief.

15 “(b) A plaintiff in an action under this section shall  
 16 be deemed to have sustained damages of no less than  
 17 \$150,000 in value.

18 “(c) An action under this section is barred if the com-  
 19 plaint is filed more than 10 years after the right of action  
 20 accrues.”.

21 (b) CLERICAL AMENDMENT.—The table of sections  
 22 at the beginning of chapter 110 of title 18, United States  
 23 Code, is amended so that the item relating to section 2255  
 24 reads as follows:

“2255. Civil remedy.”.

